

E-Filed 1/28/16

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHRISTIAN PEREZ,
Petitioner,

v.

SCOTT FRAUENHEIM, Warden, Pleasant
Valley State Prison, Coalinga, California,

Respondent.

PEOPLE OF THE STATE OF
CALIFORNIA,

Real Party in Interest.

Case No. 14-cv-03551-HRL

ORDER OF DISMISSAL

Re: Dkt. No. 5

Petitioner Christian Perez ("Perez") was convicted of several crimes in April of 2010. The Supreme Court of California denied his petition for direct review and he remains incarcerated. Dkt. No. 1 at 5. Perez petitions this court for federal habeas relief. Perez expressly consented to magistrate jurisdiction. Dkt. No. 7. Respondent has not yet appeared in this litigation.

A district court must ordinarily dismiss habeas petitions that contain claims the petitioner has not yet fully exhausted within the state-court system. 28 U.S.C. § 2254(b), (c); *Rose v. Lundy*, 455 U.S. 509, 513-14 (1982). A district court has limited discretion to hold an improper petition in abeyance instead of dismissing it. *Rhines v. Weber*, 544 U.S. 269, 276-77 (2005).

Perez claims he received ineffective assistance of counsel, but Perez also admits he did not exhaust his "state collateral relief" options for that claim. Dkt. No. 4-1 at 1. The court ruled that Perez's petition shall not be held in abeyance. Dkt. No. 5. Perez's habeas petition is dismissed because it includes an unexhausted claim.

IT IS SO ORDERED.

Dated: 1/28/16



HOWARD R. LLOYD
United States Magistrate Judge